



STATE OF INDIANA

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January 4, 2015

Mr. Forrest Lipp - #104200
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 15-FC-322; Alleged Violation of the Access to Public Records Act by the Marion Superior Court Criminal Division 1

Dear Mr. Lipp:

This advisory opinion is in response to your formal complaint alleging the Marion Superior Court Criminal Division 1 ("Court") Court Reporter violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Prosecuting Attorney has responded to your complaint via Ms. Emily VanOsdol, Court Administrator. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 8, 2015.

BACKGROUND

Your complaint dated December 3, 2015 alleges the Marion Superior Court Criminal Division 1 violated the Access to Public Records Act by failing to acknowledge your request.

On November 11, 2015 you requested a transcript of witness testimony. As of the filing of your complaint you have not received a response.

On December 18, 2015 the Court responded. The Court states that no transcript currently exists and if you wish to have a transcript created, your request would have to comply with court procedure.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. Marion Superior Court 1 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court's disclosable public records during regular

business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Court is correct that there is a proper method of requesting a transcript. The issue is a transcript is not a public record until it is prepared. See *Opinion of the Public Access Counselor 15-FC-290* –which is attached for your review; its analysis incorporated herein. The APRA does govern the requests for transcripts; however, local rules can dictate the specific process. Therefore, the Court is correct your request for documents should not have been made via a public records request.

Nevertheless, I encourage the Court and its staff to be mindful of the requirement to at least acknowledge a written public records request, even if such a request is improper or necessitates a denial. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(c).

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish extending from the bottom.

Luke H. Britt
Public Access Counselor

Cc: Ms. Emily VanOsdol, Esq.